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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,561	07/30/2003	Gerald L. Dykstra	IND06-P311A	1560
28101	7590	09/09/2005	EXAMINER	
VAN DYKE, GARDNER, LINN AND BURKHART, LLP 2851 CHARLEVOIX DRIVE; S.E. P.O. BOX 888695 GRAND RAPIDS, MI 49588-8695			AGRAWAL, CHRISTOPHER K	
			ART UNIT	PAPER NUMBER
			3726	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/604,561

Applicant(s)

DYKSTRA ET AL.

Examiner

Christopher K. Agrawal

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-12-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The references submitted in the Information Disclosure Statement filed March 12, 2004 have been considered by the examiner.

### ***Specification***

2. The disclosure is objected to because of the following informalities:
3. Paragraph [0032] refers to "diamond wire 110" however the part number is already in use. Please amend with a new part number.

### ***Claim Objections***

4. Claim 21 is objected to because of the following informalities:  
"Clam 20" should read --claim 20--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1, 2, 5-11, 16, 18, 20, 21, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (U.S. Patent No. 4,435,892).**

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7. Claim 1: Williams teaches a method of at least partially disassembling a pallet, the pallet having a plurality of deck board support interfaces, said method comprising: providing at least one cutting device that is positionable at any one of the board support interfaces (Col. 4 lines 40-45); selectively positioning said at least one cutting device adjacent a particular board support interface of the pallet (Col. 6 lines 37-55); and cutting fasteners at the particular board support interface with said at least one cutting device (Col. 6 lines 56-68).
8. Claim 2: Williams also teaches the method wherein said providing at least one cutting device comprises providing a pair of shearing blades (Col. 10 lines 37-43).
9. Claim 5: Williams teaches a pallet dismantler **1** for disassembling a pallet having a plurality of deck board support interfaces **11**, said dismantler comprising: at least one shearing assembly comprising a pair of arms **9A, 9B, 9C**, and a pair of shearing blades, **101A, 101B, 101C** each mounted at an end portion of one of said arms (Fig. 10), wherein each of said pair of arms is pivotally mounted (Col. 7 lines 61-65), said shearing assembly is adapted to selectively position said shearing blades at substantially any one of the deck board support interfaces of a pallet (Col. 11 lines 55-62); and said at least one shearing assembly including an actuator **123a, 123b** operating on said pair of arms to selectively move said shearing blades toward each other with a force sufficient to shear fasteners at a deck board support interface of a pallet (Col. 11 lines 61-68).

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10. Claim 6: Williams also teaches the dismantler of claim 5, wherein said at least one shearing assembly comprises at least three shearing assemblies **101A, 101B, 101C**.

11. Claim 7: Williams also teaches dismantler of claim 6, wherein at least two of said at least three shearing assemblies are adjustably positioned with respect to others of said at least three shearing assemblies (Col. 12 lines 49-53).

12. Claim 8: Williams also teaches the dismantler of claim 5, including a pallet support surface **13** below said at least one shearing assembly.

13. Claim 9: Williams also teaches the dismantler of claim 8 wherein said at least one shearing assembly is spaced above said support surface sufficiently to support a pallet from said at least one shearing assembly whereby said pair of shearing blades is self-aligning with a deck board support interface of a pallet (Col. 11 lines 45-68).

14. Claim 10: Williams also teaches the dismantler of claim 8, wherein said pallet support surface spaces an operator sufficiently from said at least one shearing assembly to limit operator contact with said shearing blades (Col. 8 lines 29-32).

15. Claim 11: Williams also teaches the dismantler of claim 5, wherein said actuator comprises a hydraulic actuator (Col. 11 lines 20-28).

16. Claim 16: Williams teaches a pallet dismantler for disassembling a pallet having a plurality of deck board support interfaces, said dismantler comprising: three pairs of arms **9A, 9B, 9C**, three pairs of shearing blades **101A, 101B, 101C**, each of said blades mounting at an end portion of one of said arms, three pairs of pivot pins **77**, each of said pins pivotally mounting one of said arms (Col. 8 lines 1-5), three actuators **123a, 123b**

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each positioned at another end portion of one of said pair of arms wherein said pivot pins are between the respective said shearing blades and one of said actuators; and a control system **89**, said control system substantially simultaneously selectively actuating any or all of said actuators.

17. Claim 18: Williams also teaches the dismantler of claim 16, wherein at least two of said pins are adjustably positioned with respect to others of said pins (Col. 12 lines 51-58).

18. Claim 20: Williams also teaches the dismantler of claim 16 including a pallet support surface **13** below said arms.

19. Claim 21: Williams also teaches the dismantler of Claim 20, wherein said shearing blades are sufficiently spaced above said support surface to support a pallet from said shearing blades whereby said shearing blades are self-aligning with deck board support interfaces of a pallet (Col. 11 lines 45-68).

20. Claim 24: Williams also teaches the dismantler of claim 16, wherein said control system comprises at least in part a hydraulic control system (Col. 11 lines 20-28).

### ***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**22. Claims 3, 4, 12, 13, 14, 15, 17, 19, 22, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (U.S. Patent No. 4,435,892).**

23. Claim 3: Williams teaches the invention of claim 1 as described above but does not specifically teach the method wherein said providing at least one cutting device comprises providing at least one air chisel. The use of one cutting means in lieu of another is an obvious replacement considering the well-known availability of various cutting tools and their desirability for certain applications. To merely swap shearing blades for an air chisel does not substantially alter the invention and constitutes an obvious exchange.

24. Claim 4: Williams teaches the invention of claim 1 as described above but does not specifically teach the method wherein said providing at least one cutting device comprises providing at least one diamond wire. The use of one cutting means in lieu of another is an obvious replacement considering the well-known availability of various cutting tools and their desirability for certain applications. To merely swap shearing blades for a diamond wire does not substantially alter the invention and constitutes an obvious exchange.

25. Claims 12: Williams teaches the invention of claim 5 as described above but does not specifically teach the dismantler wherein said actuator comprises an electrical actuator. Williams teaches the use of hydraulic actuators and associated controls. It is well within the prior art to substitute electrical actuators for hydraulic actuators and vice versa. Therefore, it would have been obvious to one of ordinary skill in the art to select



one of the many known actuators, including electrical actuators, in place of the hydraulic actuators of Williams.

26. Claims 13 and 14: Williams teaches the invention of claim 5 as described above but does not specifically teach the dismantler wherein said actuator selectively moves said shearing blades toward each other with a force around 2000-4000 pounds. The selection of a specific value for applied force is unpatentable unless there is further justification beyond the obvious desire to provide at least sufficient shear force for severing the nails of the pallet. The variation of force required depending on the orientation of the blades, sharpness of the blades, orientation of the actuators etc. necessitates selection of an applied force that is at least sufficient for cutting and therefore it would have been obvious to one of ordinary skill in the art to design for at least sufficient applied force.

27. Claims 15 and 23: Williams teaches the dismantlers of claims 5 and 16 as described above however Williams does not specifically teach incorporation of a safety cover. Safety covers are very well known in the cutting and manufacturing arts for the purpose of protecting the user. Safety covers are commonly incorporated in all types of devices comprising saws, blades and machine tools. Therefore, it would have been obvious to one of ordinary skill in the art to have included any type of safety cover with the pallet dismantler of Williams for the purpose of protecting the operator.

28. Claim 17: Williams also teaches the limitations of claim 16 as described above as well as those of claim 17 since "positioning the blades at least approximately 30 inches from the respective one of said pins" is merely a matter of design choice and



would be well within the ability of one of ordinary skill in the art. Claims which read on the prior art except with regard to the positioning or dimensions of a component are not patentable. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). See also *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

29. Claim 19: Williams also teaches the dismantler of claim 16 including bumpers 54 for limiting motion of said arms (Col. 6 lines 42-47). Although the bumpers of Williams are not specifically depicted between each of said arms, their implementation on the outside of the arms for limiting arm motion obviates their use between the arms.

Therefore, it would have been obvious to one of ordinary skill in the art to have included additional bumpers in further locations within the paths of the arms such as between the arms.

30. Claim 22: Williams also teaches the limitations of claim 16 as described above as well as those of claim 22 since "positioning an operator at least approximately 30 inches from said shearing blades" is merely a matter of design choice and would be well within the ability of one of ordinary skill in the art. Claims which read on the prior art except with regard to the positioning or dimensions of a component are not patentable. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). See also *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

31. Claim 25: Williams teaches the invention of claim 16 as described above but does not specifically teach the dismantler wherein said actuator comprises an electrical actuator. Williams teaches the use of hydraulic actuators and associated controls. It is well within the prior art to substitute electrical actuators for hydraulic actuators and vice

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versa. It would have been obvious to one of ordinary skill in the art to select one of the many known actuators, including electrical actuators, in place of the hydraulic actuators of Williams.

### ***Conclusion***

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher K. Agrawal whose telephone number is (571) 272-3578. The examiner can normally be reached on Mon-Fri 8AM-4:30PM.

33. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

34. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CKA



**David P. Bryant**  
Primary Examiner

**Christopher Agrawal**  
Patent Examiner  
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